

Judge Settle

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STEAKHOUSE SEATTLE, LLC and JAMES
NATIONS,

Plaintiffs,

v.

UNITED STATES,

Defendant.

CASE NO. C18-5751-RHS

ANSWER

Defendant United States of America, by its attorneys, Annette L. Hayes, United States Attorney, and Brian C. Kipnis, Assistant United States Attorney, for the Western District of Washington, answer the complaint filed herein by Plaintiffs Steakhouse Seattle, LLC and James Nations, as follows:

In response to the numbered paragraphs of the complaint, Defendant admits, denies, or otherwise avers as follows:

1.1. With respect to the allegations in Paragraph 1.1, Defendant admits that Steakhouse Seattle, LLC and James Nations are the named Plaintiffs in this lawsuit and that they have filed a complaint against the United States. The remaining allegations require no response.

1.2. The allegations in Paragraph 1.2 consist of Plaintiffs' request for judicial review of the Food and Nutrition Service's ("FNS's") Final Agency Decision and therefore require no response.

1 2.1. Defendant lacks information or knowledge sufficient to form a belief as to the truth or
2 falsity of the allegations in Paragraph 2.1 and, on that basis, denies all such allegations.

3 2.2. The allegations in Paragraph 2.2 consist of a legal conclusion and require no
4 response. Defendant lacks information or knowledge sufficient to form a belief as to the truth or
5 falsity of the remaining allegations in Paragraph 2.2 and, on that basis, denies all such allegations.

6 2.3. Defendant lacks information or knowledge sufficient to form a belief as to the truth or
7 falsity of the allegations in Paragraph 2.3 and, on that basis, denies all such allegations.

8 2.4. Defendant admits the allegations in Paragraph 2.4.

9 2.5. Defendant admits the allegations in Paragraph 2.5.

10 2.6. Defendant admits the allegations in Paragraph 2.6.

11 2.7. With respect to the allegations in the first sentence of Paragraph 2.7, Defendant
12 admits that the Supplemental Nutrition Assistance Program (“SNAP”) was formerly known as the
13 food stamp program. Except as expressly admitted, Defendant denies each and every allegation
14 contained in paragraph 2.7 of the complaint.

15 2.8. Defendant admits paragraph 2.8 of the complaint to the extent the allegation is
16 consistent with the fundamental purpose of 7 U.S.C. § 2011, and denies the allegation to the extent it
17 is inconsistent with the fundamental purpose of 7 U.S.C. § 2011.

18 2.9. Defendant admits the allegations in Paragraph 2.9.

19 3.1. Paragraph 3.1 of the complaint does not allege litigative facts but instead contains
20 only a conclusion of law as to subject matter jurisdiction, as to which no response is required. To
21 the extent a response is required, Defendant denies the allegation.

22 3.2. Paragraph 3.2 of the complaint does not allege litigative facts but instead contains
23 only a conclusion of law as to the availability of declaratory and other relief, as to which no response
24 is required. To the extent a response is required, Defendant denies the allegation.

25 3.3. Defendant admits that the United States District Court for the Western District of
26 Washington is a proper venue for the claim asserted by Plaintiffs in their complaint. Except as
27 expressly admitted, Defendant denies each and every allegation contained in paragraph 3.3 of the
28 complaint.

1 3.4. Paragraph 3.4 of the complaint does not allege litigative facts but instead contains
2 only a conclusion of law as to exhaustion of administrative remedies, as to which no response is
3 required. To the extent a response is required, Defendant denies the allegation.

4 4.1. Defendant lacks information or knowledge sufficient to form a belief as to the truth or
5 falsity of the allegations in Paragraph 4.1 and, on that basis, denies all such allegations.

6 4.2. Defendant lacks information or knowledge sufficient to form a belief as to the truth or
7 falsity of the allegations in Paragraph 4.2 and, on that basis, denies all such allegations.

8 4.3. Defendant lacks information or knowledge sufficient to form a belief as to the truth or
9 falsity of the allegations in Paragraph 4.3 and, on that basis, denies all such allegations.

10 4.4. Defendant denies the allegations in the first sentence of Paragraph 4.4. Defendant
11 admits the allegations in the second sentence of Paragraph 4.4.

12 4.5. With respect to the allegations in Paragraph 4.5, Defendant admits that Steakhouse
13 Seattle was an authorized as a SNAP Delivery Route from October 28, 2010, until January 25, 2018.
14 Defendant denies the remaining allegations in Paragraph 4.5.

15 4.6. Defendant admits the allegations in Paragraph 4.6.

16 4.7. Defendant admits the allegation to the extent that it is consistent with what is
17 contained in the August 28, 2013 Charge Letter, and denies the allegation to the extent that it is
18 inconsistent with what is contained in the August 28, 2013 Charge Letter.

19 4.8. Defendant admits the allegation to the extent that it is consistent with what is
20 contained in the August 28, 2013 Charge Letter, and denies the allegation to the extent that it is
21 inconsistent with what is contained in the August 28, 2013 Charge Letter.

22 4.9. With respect to the allegations in Paragraph 4.9, Defendant admits that FNS issued
23 the August 28, 2013 Charge Letter more than 17 months after March 22, 2012.

24 4.10 With respect to the allegations in Paragraph 4.10, Defendant admits that Steakhouse
25 Seattle submitted a request under the Freedom of Information Act ("FOIA") on September 4, 2013.
26 Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of
27 Plaintiffs' allegations regarding why they filed the request and, on that basis, denies the allegations.
28 Insofar as the remaining allegations in Paragraph 4.10 purport to characterize and/or describe the

1 content of the FOIA request, Defendant admits the allegations to the extent that they are consistent
2 with what is contained in the FOIA request, and denies the allegations to the extent that they are
3 inconsistent with what is contained in the FOIA request.

4 4.11. Defendant admits the allegation to the extent that it is consistent with FNS policy, and
5 denies the allegation to the extent that it is inconsistent with FNS policy.

6 4.12. With respect to the allegations in Paragraph 4.12, Defendant admits that proceedings
7 related to the Charge Letter were held in abeyance from September 4, 2013, until January 25, 2018.
8 Except as expressly admitted, Defendant denies each and every allegation of Paragraph 4.12.

9 4.13 Defendant admits the allegations in Paragraph 4.13.

10 4.14. Defendant admits the allegations in Paragraph 4.14 to the extent that they are
11 consistent with Plaintiff Steakhouse Seattle's response to the August 28, 2013 Charge Letter and
12 supporting documentation, and denies the allegations to the extent that they are inconsistent with the
13 August 28, 2013 Charge Letter and supporting documentation.

14 4.15. Defendant admits that FNS Section Chief Jocelyn Keh issued a letter to Plaintiff
15 Steakhouse Seattle on January 24, 2018. The remaining allegations in Paragraph 4.15 purport to
16 characterize and/or describe the content of that letter. Defendant admits the remaining allegations in
17 Paragraph 4.15 to the extent that they are consistent with FNS Section Chief Jocelyn Keh's letter
18 issued to Plaintiff Steakhouse Seattle on January 24, 2018, and denies the allegations to the extent
19 that they are inconsistent with FNS Section Chief Jocelyn Keh's letter issued to Plaintiff Steakhouse
20 Seattle on January 24, 2018.

21 4.16. Defendant admits the allegations in Paragraph 4.16 to the extent that they are
22 consistent with FNS Section Chief Jocelyn Keh's letter issued to Plaintiff Steakhouse Seattle on
23 January 24, 2018, and denies the allegations to the extent that they are inconsistent with FNS Section
24 Chief Jocelyn Keh's letter issued to Plaintiff Steakhouse Seattle on January 24, 2018.

25 4.17. With respect to the allegations in Paragraph 4.17, Defendant admits that Steakhouse
26 Seattle's attorney, Stewart Fried, submitted a letter to Shanta Swezy dated February 1, 2018, and that
27 Ms. Swezy is the Chief of FNS's Administrative Review Branch. Except as expressly admitted,
28 Defendant denies each and every allegation of Paragraph 4.17.

1 4.18. Defendant denies the allegations in Paragraph 4.18.

2 4.19. Defendant admits the allegations in Paragraph 4.19 to the extent that they are
3 consistent with 7 C.F.R. § 271.2, and denies the allegations to the extent that they are inconsistent
4 with 7 C.F.R. § 271.2.

5 4.20. Defendant admits the allegations in Paragraph 4.20 to the extent that they are
6 consistent with 7 C.F.R. § 278.6(e)(1), and denies the allegations to the extent that they are
7 inconsistent with 7 C.F.R. § 278.6(e)(1).

8 4.21. Defendant admits the allegations in Paragraph 4.21 to the extent that they are
9 consistent with 7 C.F.R. § 278.1(b)(3), and denies the allegations to the extent that they are
10 inconsistent with 7 C.F.R. § 278.1(b)(3).

11 4.22. Defendant denies the allegations in Paragraph 4.22.

12 4.23. With respect to the allegations in Paragraph 4.23, Defendant admits that FNS places
13 owners of retail food stores that are permanently disqualified from SNAP on the General Services
14 Administration's System for Award Management. Except as expressly admitted, Defendant denies
15 each and every allegation of Paragraph 4.23.

16 4.24. Defendant denies the allegations in Paragraph 4.24.

17 4.25. Defendant denies the allegations in Paragraph 4.25.

18 4.26. Defendant admits the allegations in Paragraph 4.26.

19 4.27. Defendant admits the allegations in Paragraph 4.27 to the extent that they are
20 consistent with the Final Agency Decision, and denies the allegations to the extent that they are
21 inconsistent with the Final Agency Decision.

22 4.28. Defendant admits the allegations in Paragraph 4.28.

23 4.29. Defendant admits the allegations in Paragraph 4.29, and the first sentence of
24 footnote 1 to the extent that they are consistent with the Final Agency Decision, and denies the
25 allegations to the extent that they are inconsistent with the Final Agency Decision. Defendant lacks
26 information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in the
27 second sentence of footnote 1 and, on that basis, denies them.

28 4.30. Defendant admits the allegations in Paragraph 4.30.

4.31. Defendant admits the allegations in Paragraph 4.31 to the extent that they are consistent with the Final Agency Decision, and denies the allegations to the extent that they are inconsistent with the Final Agency Decision.

4.32. Defendant admits the allegations in Paragraph 4.32 to the extent that they are consistent with the Final Agency Decision, and denies the allegations to the extent that they are inconsistent with the Final Agency Decision.

4.33. Defendant denies the allegations in Paragraph 4.33.

4.34. Defendant admits the allegations in Paragraph 4.34 to the extent that they are consistent with the Final Agency Decision, and denies the allegations to the extent that they are inconsistent with the Final Agency Decision.

4.35. With respect to the allegations in Paragraph 4.35, Defendant admits that on March 22, 2012, Brandon English sold a case of steak to a person who he believed to be a SNAP beneficiary in the parking lot of a Target store located in Tacoma, Washington and that Mr. English accepted \$250.01 in SNAP benefits from the individual. Except as expressly admitted, Defendant denies each and every allegation of Paragraph 4.35.

4.36. Defendant denies the allegations in Paragraph 4.36.

4.37. Defendant admits the allegations in Paragraph 4.37.

4.38. Defendant admits the allegations in Paragraph 4.38.

4.39. Defendant denies the allegations in Paragraph 4.39.

4.40. Defendant denies the allegations in Paragraph 4.40.

4.41. Defendant denies the allegations in Paragraph 4.41.

4.42. Defendant denies the allegations in Paragraph 4.42.

4.43. Defendant denies the allegations in Paragraph 4.43.

4.44. Defendant denies the allegations in Paragraph 4.44.

4.45. Defendant denies the allegations in Paragraph 4.45.

4.46. Defendant admits the allegations in Paragraph 4.46 to the extent that they are consistent with Seattle Steakhouse's policies, and denies the allegations to the extent that they are inconsistent with Seattle Steakhouse's policies.

1 4.47. Defendant denies the allegations in Paragraph 4.47.

2 4.48. Defendant denies the allegations in Paragraph 4.48.

3 4.49. Defendant denies the allegations in Paragraph 4.49.

4 4.50. Defendant denies the allegations in Paragraph 4.50.

5 5.1. By this reference, Defendant hereby incorporates each of its responses to all
6 preceding paragraphs.

7 5.2. Defendant denies the allegations in Paragraph 5.2.

8 5.3. Defendant denies the allegations in Paragraph 5.3.

9 5.4. Defendant denies the allegations in Paragraph 5.4.

10 5.5. Defendant denies the allegations in Paragraph 5.5.

11 5.6. Defendant denies the allegations in Paragraph 5.6.

12 5.7. Defendant denies the allegations in Paragraph 5.7.

13 5.8. Defendant denies the allegations in Paragraph 5.8.

14 5.9. Defendant denies the allegations in Paragraph 5.9.

15 5.10. Defendant denies the allegations in Paragraph 5.10.

16 5.11. Defendant denies the allegations in Paragraph 5.11.

17 5.12. Defendant denies the allegations in Paragraph 5.12.

18 5.13. Defendant denies the allegations in Paragraph 5.13.

19 5.14. Defendant denies the allegations in Paragraph 5.14.

20 5.15. Defendant denies the allegations in Paragraph 5.15.

21 5.16. Defendant denies the allegations in Paragraph 5.16.

22 5.17. Defendant denies the allegations in Paragraph 5.17.

23 5.18. Defendant denies the allegations in Paragraph 5.18.

24 5.19. Defendant denies the allegations in Paragraph 5.19.

25 5.20. Defendant denies the allegations in Paragraph 5.20.

26 5.21. Defendant denies the allegations in Paragraph 5.21.

27 5.22. Defendant denies the allegations in Paragraph 5.22.

28 5.23. Defendant denies the allegations in Paragraph 5.23.

5.24. Defendant denies the allegations in Paragraph 5.24.

5.25. Defendant denies the allegations in Paragraph 5.25.

5.26. Defendant denies the allegations in Paragraph 5.26.

5.27. Defendant denies the allegations in Paragraph 5.27.

5.28. Defendant denies the allegations in Paragraph 5.28.

5.29 Defendant denies the allegations in Paragraph 5.29.

5.30 Defendant denies the allegations in Paragraph 5.30.

5.31 Defendant denies the allegations in Paragraph 5.31.

5.32 Defendant denies the allegations in Paragraph 5.32.

5.33 Defendant denies the allegations in Paragraph 5.33.

5.34 Defendant denies the allegations in Paragraph 5.34.

5.35 Defendant denies the allegations in Paragraph 5.35.

5.36 The allegations in Paragraph 5.36 consist of Plaintiffs' request for *de novo* review of the Final Agency Decision, which requires no response. To the extent that a response is required, Defendant denies that Plaintiffs are entitled to *de novo* review of Defendant's final agency action.

5.37 The remaining allegations (Paragraph 5.37(a)-(f)) consist of Plaintiffs' prayer for relief, which requires no response. To the extent that a response is required, Defendant denies that Plaintiffs are entitled to the relief requested in Paragraph 5.37, or any relief.

WHEREFORE Defendant United States of America prays for judgment as follows:

1. For an order dismissing Plaintiffs' complaint in its entirety with prejudice;
2. For an award of Defendant's costs and disbursements incurred in this action;

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1 3. For such other and further relief as the Court may deem just and proper.

2
3 DATED this 23rd day of November, 2018.

4 Respectfully submitted,

5 ANNETTE L. HAYES
6 United States Attorney

7 s/ Brian C. Kipnis

8 BRIAN C. KIPNIS

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16 Attorneys for Defendant United States of America
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Western District of Washington and is a person of such age and discretion as to be competent to serve papers;

It is further certified that on November 23, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant(s):

Derrick Anthony De Vera ddevera@schwabe.com

Stewart D. Fried sfried@ofwlaw.com

Virginia Rosalie Nicholson vnicholson@schwabe.com

I further certify that on November 23, 2018, I mailed the foregoing document by United States Postal Service to the following non-CM/ECF participant(s)/CM/ECF participant(s), addressed as follows:

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DATED this 23rd day of November, 2018.

s/ Crissy Leininger
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